IN THE HIGH COURT OF JUDICATURE AT BOMBAY
SPECIAL ORIGINAL JURISDICTION

CHARTERED ACCOUNTANT REFERENCE NO. 5 OF 1990

In the matter of the Council of the
Institute of Chartered Accountants
of India, Indraprastha Marg,
New Delhi 110 002. .. Applicant

vs.

Shri S.N. Deshpande,
Chartered Accountant,
M/s. S. N. Deshpande & Co.,
Chartered Accountants
314, Chitrashala Building,
562, Sadashiv Peth,
Poona-30. .. Respondent

Dr. Virendra Tulzapurkar, senior counsel with Ms. S.Srikrishna i/b. M/s.Kanga & Co. for the petitioner-applicant.

CORAM : R.M. LODHA &
J. P. DEVADHAR,JJ.

Date : 9th August 2004

ORAL JUDGMENT (PER R.M. LODHA,J.)

After having heard the learned senior counsel for the Council of the Institute of Chartered Accountants of India, we find that the reference made under Section 21(5) of the Chartered Accountants Act, 1949 is not legally

competent for want of any recommendation by the Council of Institute of Chartered Accountants of India to this Court and in view thereof, no order can be passed under Section 21(6) of the Chartered Accountants Act, 1949.

2. On a complaint dated 27th April 1985 made by the Registrar of Companies, Maharashtra, Bombay against the respondent Shri S. N. Deshpande, who is member of the Institute of Chartered Accountants of India, the disciplinary proceedings commenced against the respondent. The charge against the respondent was that the respondent being the auditor of M/s. Vacuum Plant & Instruments Manufacturing Co. Private Ltd. for the years 31.12.1981 and 31.12.1982 had certified the figures in the Returns of Deposits of the company which were filed with the Registrar of Companies under rule 10 of the Companies (Acceptance of Deposits) Rules, 1975. The Registrar of Companies issued show cause notice to the Company and its director. The respondent was asked by the Registrar of Companies to explain why a wrong certificate was given. The respondent did not reply to the notice of the Registrar of Companies. The respondent failed to report, according to the Registrar of Companies, various violations of the company in its auditor's report. The specific charges that emerged against the respondent were thus:

(1)The figures of deposits shown in the returns of deposits under Rule 10 of the Companies (Acceptance of deposits) Rules 1975 read with Section 58A of the Companies Act, 1956 duly certified by the Respondent as Statutory Auditor of the company for the years ending 31st March 1982 and 31st March 1983 respectively (the date on which the returns certified not mentioned), received by the office of the complainant on 5.7.1982 and 15.7.1983 respectively were incorrect.

(2)The figures of deposits shown in the revised returns of deposits of the company for the years ending 31st March 1982 and 31st March 1983 duly certified by the Respondent (the date on which the returns were certified not mentioned) received in the office of the complainant on 9th December 1983 were incorrect.

(3)Some categories of deposits stated to have been guaranteed by the Directors which fall under Rule 3(2) (i) of the Companies (Acceptance of Deposits) Rules 1975 between 1.4.82 and 31.3.1983 for which no disclosure was made in the relevant Balance Sheets of the company about the unsecured loans guaranteed by the Directors as on 31.12.1981 and 31.12.1982 as required under Schedule VI part I read with Section 211 of the Companies Act, 1956 duly certified by the Respondent. The Respondent did not report the said violation in the Auditor's Report on the accounts for the years 31.12.1981 and 31.12.1982.

(4)The Respondent did not reply to the show cause notice dated 28.3.1984 sent by the complainant for violation of the provisions of Rule 3(2) (i) of the Companies (Acceptance of deposits) Rules, 1975 by the company in the matter of acceptance of deposits during the period covered by the returns of deposits as on 31.3.1982 and 31.3.1983.

(5)The revised deposits as on 31.3.1982 and 31.3.1983 revealed employees' security deposits amounting to Rs. 61,000/- which were not deposits as required under Section 417 of the Companies Act 1956 by the Company. The Respondent did not report this violation in his Auditors' Report on the accounts of the company for the years ending 31.12.1981 and 31.12.1982."

3. The respondent, thus, was charged that being the auditor of the company he was negligent in discharge of his duties in certifying the incorrect figures in the returns of the deposits as on 31.03.1982 and 31.03.1983 and also not pointing out violations of the provisions of the Companies Act in his Report.

4. The respondent denied the charges and explained the position thus:

> "That the Respondent issued certificates dated 20-6-1982 and 9-7-1983 at the foot of Return of Deposits filed by the company. The company forwarded to him on 30.11.1983, copy of a letter dated 14.11.1983 by the Complainant to the company. The company informed video letter dated 30.1.1983 that certain deposits had been grouped under the incorrect heading and claiming that a few of the exempted deposits were covered in the deposits included in the Return. The company also sent a chart showing revised grouping of the deposits. The chart forwarded to him by the company along with the said letter was not traceable and hence he was not in a position to produce it before the committee. On receipt of the said letter he visited the company's office and re-examined the Fixed Deposit Registers. Respondent thereupon checked the concerned deposits with the help of supporting evidence and desired the concerned officer to write appropriate remarks in the Deposit Registers before he issued his revised certificate. He enquired from Managing Director and concerned officer for not bringing these facts into his notice at the time of issuance of original certificates wherein the deposits were

shown exceeding the ceiling limits. He was told the company had given lay off to many of its employees. The management of the company was compelled to declare a lock-out on 1.12.1982 because of the labour trouble. Thereafter even though the lock-out was called of, adverse market conditions had compelled the company to give a lay-of to its employees. In the circumstances, the available accounts staff had produced before him the Deposit Registers as they were. He collected the information required from the record maintained by the company. The information as to the grouping of the deposits had not been entered in the Deposit Registers at the relevant time. In the facts and the circumstances, he submitted that the certificate was issued by him on 9.7.1983 on verifying the Registers of Deposits and its corresponding account in the ledger. Thereafter, when he issued his revised certificate, he had certified that "allocation of amount as per revised statements and as explanations and statements, checked and found correct." He had no reason to believe or to suspect that the contents of the Deposit Registers were inaccurate. Later on when the company's officers and Directors furnished him fresh information, he issued his revised certificate after examining the supporting evidence of regrouping of deposits and after causing appropriate remarks to be made in the Deposits Registers. As regards the contention of the complainant that he had omitted to disclose in the Balance Sheets of the company as at 31.12.1981 and 31.12.1982 about the unsecured loans having been guaranteed by the Directors as required by the law, it is submitted that the Balance Sheets and profit and Loss Accounts of the company for the years ended 31.12.1981 and 31.12.1982 were audited by him and signed by him on 30.5.1982 and on 5.6.1983 on which dates, he was obviously not aware of the facts about some of the deposits having been guaranteed by the Directors. The respondent while checking up the annual accounts of the company he carried out all routine checks including those relating to deposits. There were no remarks either in the Deposits Registers or on the counterfoils of the deposit receipts or in the cash book or in the ledger account

about any deposits having been received from employees. When he rechecked the accounts in the light of the information given to him by the company, he was shown office copies of guarantee letters issued by the Directors to the concerned depositors. He was told that the original of these, engrossed on stamp were issued to the concerned depositors. There was no corresponding remarks on any of the relevant record and hence he had no means of knowing that the company had committed an omission in the matter of grouping the deposits guaranteed by the Directors separately. Since he believed that the company had exceeded its limit in the mater of accepting the deposits, he had passed a remark to that effect in his Annexure to Audit Report at item No.9 on the accounts for the year ending 31.12.1982 and a similar remark also appeared in the same annexure in his report on the accounts for the year ending 31.12.1983. When he learned about the other proceedings initiated by the Registrar of Companies Bombay, he had mentioned these facts in the notes at item No.5 under Schedule `M' forming part of his audit report annexed to accounts for the year ended 31.12.1983. In absence of any remarks on the concerned documents about any of the deposits included in the Registers of Deposits having been received from the employees or ex-employees of the company or about such deposits having been received as security Deposit under the provisions of Companies Act he had no means of knowing that any of the deposits included herein had been received from this category of the depositors. He adopted normal procedure and had exercised normal diligence in discharging his responsibilities as the Auditor of the company. Omission in records occurred because of the peculiar predicaments in which the company was placed at the relevant time. The letter dated 28.3.1984 purported to have been addressed to him by the complainant was not received by him. He shifted his office since 1977."

5. The disciplinary committee held that the charges 1 and 2 were proved.

Charges 3, 4 and 5 were not held to be proved by the disciplinary committee. The disciplinary committee, thus, forwarded its report to the Council of Institute of Chartered Accountants.

6. The Council of Institute of Chartered Accountants accepted the finding of the disciplinary authority on charges 1 and 2 and accordingly, concurred with the finding of the disciplinary authority that the respondent was guilty of professional misconduct within the meaning of sections 21 and 22 of the Chartered Accountants Act, 1949 read with clause (7) of Part I of the Second Schedule. The Council though recorded the said finding but has not forwarded any recommendation to this Court. Sub-section (5) of Section 21 of the Act of 1949 provides that where the guilt of misconduct in respect of which the Council has found any member of the Institute guilty other than any such misconduct as is referred to in sub-section (4), it shall forward the case to the High Court with its recommendation thereon. For want of any recommendation under sub-section (5) by the Council, it is not possible for this Court to take action against the erring member of the Institute. The reference, for want of recommendation by the Council, is not competent and in view thereof, no order needs to be passed by this Court and it is disposed of accordingly.

(R. M. LODHA, J.)

(J. P. DEVADHAR,J.)